



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0473]

RIN 1625-AA00

Safety Zone; Firework Display; Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500 yard radius from a fireworks barge located near Town Point Park in Norfolk, VA. The purpose of this rulemaking is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events. Hazards with this event include potential falling debris and possible fire, explosion, projectile, and burn hazards. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Virginia.

DATES: This rule is effective from noon on June 10, 2022, through 11:59 p.m. on June 12, 2022. This rule will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This rule may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF-FM marine band radio.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0473 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757-668-5580 email *Ashley.E.Holm@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. It is impracticable and contrary to the public interest to publish an NPRM for this rule because this safety zone must be in effect by June 11, 2022, to ensure the safety of persons, vessels, and the navigable waters within close proximity to the fireworks display from potential hazards that associated with this event. These potential hazards include falling debris and possible fire, explosion, projectile, and burn hazards. There is not sufficient time to allow for a notice and comment period prior to the event.

While we are unable to provide the public a chance to comment on the temporary final rule establishing a safety zone for this year's event, we have recently solicited comments from the public for a safety zone at this location for future fireworks displays associated with Harborfest. On March 18, 2022, the Coast Guard published an NPRM to amend its safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility (87 FR 15347). That proposal included the addition of a recurring safety zone for Harborfest at the same location as this temporary final rule. On May 13, 2022, the final rule was published and the Coast Guard addressed the one comment received (87 FR 29226). This temporary final rule is needed because the final rule establishing the recurring event will not be effective until after the event for this year.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be impracticable and contrary to the public interest. Immediate action is needed to ensure the safety of event spectators, support craft and other vessels transiting the navigational waters adjacent to the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However, advance notifications will be made to affected users of the waterway via marine information broadcasts and an article in the Local Notice to Mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks events present a safety concern for anyone within the safety zone. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from noon on June 10, 2022, through 11:59 p.m. on June 12, 2022. This rule will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This rule may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF-FM marine band radio.

The safety zone will cover all navigable waters within a 500 yard radius from a fireworks barge located at approximate latitude 36°50'41" N, longitude 076°17'47" W, located near Town Point Park in Norfolk, VA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss first amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short amount of time that

vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. This rule will be in effect for 36 hours. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated area. Advance notifications will also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM marine channel 16, and Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. The Coast Guard anticipates that this safety zone will only be enforced for a limited duration while it is in effect.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 30 minutes that will prohibit entry within 500 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60c of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0473 to read as follows:

§ 165.T05-0473 Safety Zone; Firework Display; Elizabeth River, Norfolk, VA.

(a) *Location.* The following area is a safety zone: all waters of the Elizabeth River within a 500 yard radius from a fireworks barge located at approximate position latitude 36°50'41" N, longitude 076°17'47" W, located near Town Point Park in Norfolk, VA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Virginia in the enforcement of the special local regulation.

(c) *Regulation.* (1) No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 p.m. until 11 p.m. on June 11, 2022, or those same hours on June 12, 2022, in the case of inclement weather on June 11, 2022. This section may also be enforced during additional times during the effective period if deemed necessary by the COTP or the Coast Guard designated representative. The COTP or designated representative will notify the public of

additional enforcement of this zone during its effective period by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF-FM marine band radio.

Dated: June 3, 2022.

S. C. Stevens,
Captain, U.S. Coast Guard,
Captain of the Port Virginia.

[FR Doc. 2022-12408 Filed: 6/8/2022 8:45 am; Publication Date: 6/9/2022]